

This Opinion is Not a
Precedent of the TTAB

Mailed: December 1, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Christian J. A. O. Faloye and John C. R. Cato
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Serial No. 90260733
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Kristin Grant of Grant Attorneys At Law PLLC,
for Christian J. A. O. Faloye and John C. R. Cato.

Caroline Wood, Trademark Examining Attorney, Law Office 110,
Chris Pedersen, Managing Attorney.

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Before Kuhlke, Goodman and Lebow,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

On October 16, 2020, Christian J. A. O. Faloye and John C. R. Cato (Applicants) filed an application (Serial No. 90260733) for registration on the Principal Register under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051, based on an allegation of an intention to use the mark in commerce, of the term STREAM THEATRES (STREAM disclaimed) in standard characters for various services discussed in detail below.

I. Background

Registration was originally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §§ 1052(e)(1), on the ground that STREAM THEATRES is merely descriptive of the identified services. In addition, the Examining Attorney advised the applied-for mark “appears to be generic” and “cannot recommend that applicant[s] amend the application to proceed under Trademark Act Section 2(f) or on the Supplemental Register as possible response options to this refusal.” March 23, 2021 Office Action, TSDR 1.¹

After the mere descriptiveness refusal was made final, Applicants filed 1) a request for reconsideration, 2) an Amendment to Allege Use for two of the applied-for international classes and to delete the third class, and 3) an amendment to seek registration on the Supplemental Register. The request for reconsideration seeks to amend the application to the Supplemental Register for two classes and to delete the third class. In response, the Examining Attorney accepted the Amendment to Allege Use and refused registration on the Supplemental Register under Sections 23(c) and 45 of the Trademark Act, 15 U.S.C. §§ 1091(c) and 1127, on the ground that STREAM THEATRES is incapable of identifying Applicants’ services. Applicants then

¹ Citations to the examination record refer to the USPTO’s online Trademark Status and Document Retrieval system (TSDR).

Citations to TTABVue throughout the decision are to the Board’s public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVue electronic case file and the second represents the page number(s).

responded by amending the identification of services and arguing against the refusal. The Examining Attorney issued a subsequent final action and Applicants appealed.

In view of Applicants' amendment, the sole issue in the appeal is whether STREAM THEATRES is unregistrable on the Supplemental Register because it is generic for Applicants' services ultimately identified as:

Streaming of audio, visual and audiovisual material via a global computer network during in-person events at movie theaters and other venues; Video broadcasting and transmission services via the Internet, featuring films and movies, provided during in-person events at movie theaters and other venues, in International Class 38;

Movie showing; Movie studio services; Booking of seats for shows and booking of theatre tickets; Cinema theaters; Dinner theaters; **Entertainment services, namely, the provision of continuing entertainment featuring movies delivered by streaming provided during in-person events at movie theaters and other venues;** Live musical theater performances; Motion picture theaters; Movie theaters; Planning arrangement of showing movies, shows, plays or musical performances; Providing theater listings; Providing a website featuring entertainment information in the field of streaming movies; Providing an Internet website portal featuring entertainment news and information specifically in the field of movies; Rental of portable theatre seating, in International Class 41.

We focus on the highlighted services for our analysis. If the proposed mark is held generic for any of the services identified in a class of an involved application, registration is properly refused. *See In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (unpublished); *Cf. In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). ("A descriptiveness refusal is proper 'if the mark is descriptive of any

of the [services] for which registration is sought.”) (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)).

II. Is the Applied-For Mark Generic

“A generic name--the name of a class of products or services--is ineligible for federal trademark registration.” *U.S. Patent & Trademark Office v. Booking.com B.V.*, 140 S. Ct. 2298, 2020 USPQ2d 10729, *2. Generic terms are “by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.” *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) quoted in *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016). “Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services.” *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2011) (citations omitted). *See also Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045-46 (Fed. Cir. 2018).

Whether a proposed mark is generic rests on its primary significance to the relevant public. *In re Am. Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *see also USPTO v. Booking.com B.V.*, 2020 USPQ2d 10729, at *5. Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the

relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp. v. Int’l Ass’n. of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *see also Royal Crown*, 127 USPQ2d at 1046. Moreover, “a term can be generic for a genus of goods or services if the relevant public . . . understands the term to refer to a key aspect of that genus.” *Cordua Rests.*, 118 USPQ2d at 1637.

A. Genus of Services

Because the identification of services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), generally “a proper genericness inquiry focuses on the description of [goods and/or] services set forth in the [application or] certificate of registration.” *Cordua Rests.*, 118 USPQ2d at 1636 (quoting *Magic Wand*, 19 USPQ2d at 1552). In this case, we find that the identification appropriately expresses the genus of services at issue.

The Examining Attorney and Applicants agree the genus is based on the identified services and the relevant consumer is an ordinary consumer seeking such services but express some dispute as to the interpretation of the genus. Applicants base much of their argument against the refusal on the limitation in the identification that restricts the services to “in-person events.” Specifically, Applicants argue:

To be clear, the relevant genus of services does not consist of any and all types of streaming services but only those specifically included on the Application. The Applicant[s] Services refer specifically to in-person public events that take place at theaters and other venues. They do not encompass any streaming services that are provided as an alternative to public, in-person events.

App. Brief, 4 TTABVUE 11.

The Examining Attorney takes the position that despite this limitation to location, the genus includes streaming services in general, the identification being a subcategory of a streaming services genus, and we must make our determination by including consideration of the understanding of the term within the context of this broader definition of the genus. Specifically, the Examining Attorney argues:

The definition of “stream” is devoid of any reference at all as to where streaming occurs, as it can be performed from any venue or location, public or private. In this case, the specific identification of services in the application is a subcategory of a broader spectrum of services for streaming. Furthermore, reliance on the identification of services to identify the genus of the services at issue “is based on the premise that the recitation accurately reflects actual conditions of use of the involved term.” *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1483 (TTAB 2005). Thus, when the term at issue is being used to identify the source of a variety of interrelated activities, it is appropriate to take all of the undifferentiated services into consideration when defining the genus of the services. *Id.* Accordingly, despite Applicant[s]’ decision to limit the genus of its services in the specific identification of services to “in-person events at movie theaters and other venues,” those services are key aspects of the broader category of services for streaming and theater services. ... In other words, Applicant[s are] using STREAM THEATRES to identify a broad spectrum of services for stream[ing] theatre services for which the recitation of services in the application is a key aspect. ... Further, Applicant[s]’ identification states that the services are “streaming” that occurs in a “theater” or “theatres.” Therefore, the Applicant[s]’ services are a subcategory of general streaming services, they are streaming services that take place in theaters, entertainment services from theatres delivered via streaming and entertainment content presented in theaters delivered via streaming, therefore the proposed mark is generic.

Ex. Att. Brief, 6 TTABVUE 6.

We find the identification of services adequately defines the genus. The arguments from the Examining Attorney seem to go more to the probative value of the evidence showing use of the word streaming generally, rather than the scope of the relevant genus. We keep in mind that Applicants do provide online services as well as the in-person services remaining in the amended identification, and that streaming may occur anywhere, but we address the evidence in the analysis of determining how consumers would understand STREAM THEATRES in the context of streaming at in-person events in theaters, whether as part of an entertainment service (International Class 41) or a broadcast/streaming service (International Class 38).

B. Does the Relevant Public Understand STREAM THEATRES Primarily Refers to the Genus?

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Merrill Lynch*, 4 USPQ2d at 1143; *see also Cordua Rests.*, 118 USPQ2d at 1634. In some cases, dictionary definitions and an applicant’s own recitation of goods or services may suffice to show genericness. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987); *see also Am. Fertility Soc’y*, 51 USPQ2d at 1836.

The record includes the following definitions of the words STREAM, STREAMING and THEATRE:

Stream: digital data (such as audio or video material) that is continuously delivered one packet at a time and is usually intended for immediate processing or playback²

Streaming: Streaming refers to any media content – live or recorded – delivered to computers and mobile devices via the internet and played back in real time³

Theatre: a building, room, or outdoor structure for the presentation of plays, films, or other dramatic performances; dramatic literature or its performance; drama⁴

Based on the definitions the Examining Attorney contends:

In the present case, combining the words “STREAM” and “THEATRES” into a single composite conveys the exact definitions above – delivering digital data, or stream[ing] provided in a building for showing motion pictures, or theatres and entertainment services in theatres provided via steaming and/or entertainment services provided from theatres and distributed via streaming. ... Accordingly, STREAM THEATRES may be defined as streaming material comprising entertainment from theatres or entertainment material delivered via streaming occurring in theatres.

Ex. Att. Brief, 6 TTABVUE 8.

The Examining Attorney further supports the refusal with evidence comprised of excerpts from third-party websites using the terms “stream[ing]” and “theater[re].”

Those highlighted in the Examining Attorney’s brief are summarized below.

² Referenced in the Examining Attorney’s brief, www.merriam-webster.com/dictionary/stream. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

³ September 23, 2021 Response, TSDR 8 (www.verizon.com).

⁴ December 22, 2022 Final Office Action, TSDR 5 (THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (2022)); *see also* March 23, 2021 Office Action, TSDR 2 (theater: a building or area for showing motion pictures, www.merriam-webster.com (2021)).

In the most seismic shift by a Hollywood studio yet during the pandemic, Warner Bros. Pictures on Thursday announced that all of its 2021 film slate – including a new “Matrix” movie, “Godzilla vs. Kong” and the Lin-Manuel Miranda adaptation “In the Heights” – will stream on HBO Max at the same time the films play in theaters.”⁵

Dune, Halloween Kills, HBO Max, Peacock? Where to stream movies in theaters now. Some new movies in theaters are steaming.⁶

3 Ways to Watch Movies Still in Theaters Online (Free) – Watching still in theater movies online for free is done by connecting custom made servers to free media streaming applications.⁷

How can I watch new movies without going to theaters? Here are the best websites to stream theater movies for free online: ...⁸

You will be able to stream THEATER MOVIES, TV Shows, LIVE TV with NO MONTHLY BILL & SPORTING EVENTS without SUBSCRIPTION.⁹

Stream theatre on your TV from wherever you are! Upcoming Stream: Charlotte’s Web.. In conjunction with the Dramatic Publishing Company of Woodstock, Illinois, Plant City Entertainment is proud to stream Joseph Robinette’s Charlotte’s Web, to your devices through the Broadway on Demand platform;¹⁰

National Theatre live: how to stream theatre shows at home on YouTube for free – from Treasure Island to Twelfth Night.¹¹

⁵ October 25, 2021 Office Action, TSDR 30 (federalnewsnetwork.com).

⁶ October 25, 2021 Office Action, TSDR 2 (www.cnet.com).

⁷ October 25, 2021 Office Action, TSDR 10 (mediapeanut.com).

⁸ December 22, 2022 Office Action, TSDR 9 (wiki.celebrity.fm).

⁹ December 22, 2022 Office Action, TSDR 10 (boutiqueclt.com).

¹⁰ December 22, 2022 Office Action, TSDR 6 (plantcityentertainmnet.com).

¹¹ December 22, 2022 Office Action, TSDR, 7 (www.scotsman.com).

This bizarre moment in history has brought us a unique opportunity to stream theatre performances, for a limited time, from all over the country, even the world.¹²

Investing in new technology, such as an array of PTZ cameras means we can record and stream theatre like never before. No more blocking off seats and having cameras and crew taking up seats and causing a distraction for your audience. These cameras can be rigged out of view and in key places to get the best images to tell your story.¹³

Applicants' website provides insight into key aspects of the services:

Excerpt from Instagram pages "We will bring all of these experiences and people together at our events and other sites. You can stream the full length video via our post on everyone loves a good story.com directly on YouTube!" and "A @cgccomics Unboxing/Listening Party & Pop Up Event ... Streaming @disneyplus, @themoonknight"¹⁴

It is the Examining Attorney's position that the website evidence showing use of the terms together in the context of streaming theater productions to private venues or streaming theater movies to private venues is probative of generic use of the term STREAM THEATRES for streaming in theaters because it shows the term "has a meaning in the entertainment world." Ex. Att. Brief, 6 TTABVUE 8. Applicants argue this evidence has no probative value as none of the examples show use of the terms in connection with their services. We agree with Applicants that the evidence is not

¹² December 22, 2022 Office Action, TSDR 2 (bookanfilmglobe.com).

¹³ December 22, 2022 Office Action, TSDR 3 (phproductionservices.com).

¹⁴ April 25, 2022 Amendment to Allege Use, TSDR at 2-4. See *In re Reed Elsevier Props.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (appropriate to consider the applicant's website to provide context for and inform the understanding of the identification); *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005) (examining the subject website in order to understand the meaning of terms).

fully on point. Streaming live theater or a theatrically released movie into a private home is different from providing a public venue and streaming entertainment. To be sure, they all involve streaming and theaters, but the service the consumer is receiving is different in each case.

However, while the evidence of usage presented by the Examining Attorney references a different streaming type of service (streaming to private venues), it does show that streaming, a key aspect of Applicants' services, is generic for the service of streaming. These uses do serve to show how a consumer would understand the word STREAM in connection with a service that provides streaming to refer to a key aspect of the services. Similarly, the evidence shows consumers' understanding of activity in a theater being streamed to private venues -- "stream theater" is used generically to refer to that service. Here, the service is the reverse, streaming content at the theater, but use of these words together in this context also refers to the activity (stream) and venue (theatre).

Applicants argue the "Examining Attorney has failed to submit a single piece of evidence that demonstrates that the Applicant[s] Mark as a whole is understood by the relevant public to primarily refer to the genus of Applicant[s] Services." App. Brief, 4 TTABVUE 12. However, we "may consider the understood meanings of portions of Applicant's [proposed mark] as a step in the process towards our ultimate finding of whether the proposed mark, as a whole, is generic for Applicant's services." *In re The Consumer Prot. Firm PLLC*, 2021 USPQ2d 238, at *17 (TTAB 2021). We

begin by determining the understood meaning of the words STREAM and THEATRES in the context of Applicants' services in both classes.

The dictionary definitions in the record are probative on that issue. *Gould*, 5 USPQ2d at 1111-12 (discussing a dictionary definition of the word "wipe" in the proposed mark SCREENWIPE); *In re Empire Tech. Dev. LLC*, 120 USPQ2d 1544, 1550 (TTAB 2017) (discussing dictionary definitions of the words COFFEE and FLOUR in the proposed mark COFFEE FLOUR). Applicants do not dispute the submitted definitions for STREAM and THEATRE and has disclaimed the word STREAM. However, Applicants argue that "even if the Board finds that the evidence submitted may support a finding of genericness of the terms 'Stream' and/or 'Theatre' individually, this is not enough to show that a proposed mark's constituent terms are generic; the meaning of the proposed mark as a whole must be considered. A mark consisting of individually generic terms is only generic if the combination yields no additional, non-generic, meaning to consumers." App. Brief, 4 TTABVUE 14 (citation omitted).

We find the dictionary definitions in the context of the applied-for services, combined with Applicants' specimens sufficient to establish that STREAM THEATRES would be understood by consumers to refer to the genus of the services, providing streaming at in-person events in a theater. Applicants have already disclaimed the word STREAM on the Supplemental Register. What remains is the word THEATRES and the combination STREAM THEATRES. THEATRE is generic for a key aspect of the services, i.e., they are provided at in-person events at movie

theatres and other venues. We do not find, as Applicants urge, that the combination presents an incongruous combination or a meaning beyond their generic meanings that tell a consumer streaming takes place in a theater. That Applicants are the first or only users of such a term or word combination does not support registration of generic wording. *See In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010) (“The fact that an applicant may be the first or only user of a generic designation or, as in this case, a compressed version of such a term, does not justify registration if the only significance conveyed by the term is that of the category of goods.”); *Nat’l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

‘[A] compound of generic elements is [also] generic if the combination yields no additional meaning to consumers capable of distinguishing the goods or services.’” *Consumer Prot. Firm*, 2021 USPQ2d 238, at *16 (quoting *Booking.com*, 2020 USPQ2d 10729, at *7). As the Federal Circuit has explained, “where the [proposed] mark in its entirety has exactly the same meaning as the individual words . . . ‘the [US]PTO has satisfied its evidentiary burden if . . . it produces evidence including dictionary definitions that the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound [or phrase].’” *Id.*, at * 17 (quoting *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1831 (Fed. Cir. 2015)) (internal citation omitted).

Overall, the evidence shows STREAM THEATRES names the services or at a minimum refers to the key aspects of the services, streaming in a theater. *See Cordua*

Rests., 118 USPQ2d at 1637 (CHURRASCOS a type of grilled meat generic for restaurant services); *In re Am. Inst. of Certified Pub. Accountants*, 65 USPQ2d 1972 (TTAB 2003) (finding CPA EXAMINATION generic for “printed matter, namely, practice accounting examinations; accounting exams; accounting exam information booklets; and prior accounting examination questions and answers”). Thus, Applicants’ proposed mark is generic for the identified services. *Royal Crown*, 127 USPQ2d at 1045; *Cordua Rests.*, 118 USPQ2d at 1637.

The “fact that there is no evidence of third-party use of the precise term [STREAM THEATRES] is not, by itself, necessarily fatal to a finding of genericness.” *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957 (TTAB 2018). *See also Gould*, 5 USPQ2d at 1111-12 (affirming the Board’s finding that SCREENWIPE was generic for “pre-moistened, antistatic cloth for cleaning computer and television screens” based on dictionary definitions of the words, third-party registrations, and the applicant’s own generic use of the claimed mark on its specimen, even though there was no evidence of third-party use of the proposed mark); *Empire Tech.*, 123 USPQ2d at 1564 (rejecting the applicant’s argument that the fact that none of its competitors “use the term [COFFEE FLOUR] at issue” raised “doubt as to whether the term actually primarily refers to a genus of goods or services and whether competitors can effectively identify their goods or services without using that particular phrase,” in view of the “well-settled principle that being the first and only user of a generic term even if the public associates it with the first user does not make an otherwise generic term non-generic.”); *cf. KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*,

543 U.S. 111, 72 USPQ2d 1833, 1838 (2004) (discussing “the undesirability of allowing anyone to obtain a complete monopoly on use of a descriptive term simply by grabbing it first.”).

In *Mecca Grade Growers* the Board rejected arguments relying on lack of third-party use, and found that MECHANICALLY FLOOR-MALTED was generic even in the absence of its use by third parties or the public. The Board noted that in *Princeton Vanguard*, the Federal Circuit “was explicit in not overruling *In re Gould*, an ex parte appeal where dictionary definitions and Applicant’s explanatory text in its specimen sufficed to establish genericness” of the proposed mark SCREENWIPE for “pre-moistened, antistatic cloth for cleaning computer and television screens.” *Mecca Grade Growers*, 125 USPQ2d at 1957.

Princeton Vanguard “simply underscores that all evidence bearing on public perception must be given appropriate consideration,” *Mecca Grade Growers*, 125 USPQ2d at 1958, and that a proposed mark can be found to be generic under the *Marvin Ginn* test even if it is used only by the applicant for registration. *Id.*

Applicants further argue that the:

Examining Attorney’s evidence supporting genericness may be offset by Applicant[s]’ evidence in favor of registration. Applicant[s]’ submitted evidence supports a clear distinction between any generic use of the “stream” and the use of Applicant[s]’ Mark for the particular genus of services at issue ... The term “stream” and “streaming services” is commonly referred to in the media, popular culture, and most importantly, among the relevant public, as services that are provided on personal devices and at home or other private locations as opposed to theaters or public venues. ... Further, streamlining services, as understood by the relevant public, are by their nature

typically available at will and on demand, and not provided at a specific time or place.

App. Brief, 4 TTABVUE 16 (citations omitted).

Applicants point to excerpts from a dictionary and an online article discussing the meaning of streaming services summarized below:

A service that sends video, music, etc., over the internet so that people can watch or listen to it immediately rather than having to download it, or rather than having to watch or listen at a particular time when something is broadcast (<https://dictionary.cambridge.org>);

An online provider of entertainment (music, movies, etc.) that delivers the content via an Internet connection to the subscriber's computer, TV or mobile device (www.pcmag.com)

November 22, 2022 Response, TSDR 10, 12.

In addition, Applicants argue it has submitted evidence that purportedly “demonstrates the incongruity between the use of STREAM THEATRES in connection with Applicant[s] Services v. the common understating of ‘Stream’ and ‘Theatres’ by the relevant public.” App. Brief, 4 TTABVUE 17. The evidence consists of a poll taken by something called CivicScience as reported in Paste Magazine. The question asked was: “When new movies are released simultaneously to theaters and streaming services, how do you prefer to watch them for the first time?” Of those polled, according to the article, 56% “said they preferred to stream at home, while only 44% said they preferred to see the same film at a theater.” November 22, 2022 Response, TSDR 18. In short, Applicants contend that the combination is incongruous in the context of their services because the relevant consumers think of stream[ing]

occurring in a private venue and on demand in contrast to their services which occur at a public venue at a set time.

We find this evidence does not offset the other evidence of record and does not rule out consumers understanding streaming services may be and are provided also in public settings, in particular within the context of Applicants' identified services. *Remington Prods., Inc. v. N. Am. Phillips Corp.*, 892 F.2d 1576, 13 USPQ2d 1444, 1448 (Fed. Cir. 1990). The fact that it may have another meaning in another context is not controlling. *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *10 (TTAB 2019) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)). Consumers, in the context of Applicants' services in both classes would understand the term STREAM THEATRES to refer to theatres where entertainment is streamed.

Decision: The refusal to register STREAM THEATRES on the Supplemental Register on the ground that it is a generic designation under Section 23 is affirmed.